IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7022 OF 2004

Mrs.Premlata Shanker Menon ...Petitioner

Versus

The Maharashtra Housing And

Area Development Authority & Ors. ...Respondents

AND

WRIT PETITION NO.7023 OF 2004

Mr.J.B.Joshi ...Petitioner

Versus

The Maharashtra Housing ...Respondents

.....

Mr.M.S.Menon for Petitioners.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 31, 2004.

P.C.

1. Heard Counsel appearing for the Petitioners.

2. I find no reason to interfere with the

view expressed by the Trial Court for the nature of relief claimed in the Suit. The Suit was specifically barred. It is seen that the relief in the Suit is to declare the Recovery Certificate issued by the Defendant No.3 as illegal and bad in law. The Recovery Certificate has been issued in exercise of powers under Section 101 of the Maharashtra Co-operative Societies Act, 1960. The same has been issued after the demand was made by the Society and the demand remained unfulfilled. Therefore, the Society took recourse to remedy under Section 101 of the Act. Section 101(3) makes it abundantly clear that the Certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, for the recovery of land revenue. Section 163(3) of the Act clearly provides that all orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified,

revised or declared void in any Court upon the merits or upon any other ground whatsoever.

3. The Trial Court having found that the Suit is barred, has directed return of Plaint to the Plaintiff for being presented before proper authority under Order VII Rule 10 of the Code of Civil Procedure, 1908. The grievance of the Petitioners is that, when the Court was examining prayer for ad-interim relief, such a course was not open. There is no substance in this submission. Order VII Rule 10 of the Code of Civil Procedure mandates that the Court, if satisfied that the Suit is barred by any law, is obliged to return the Plaint to the Plaintiff for being presented before the appropriate forum. The Court is expected to return the Plaint at the threshold.

4. Viewed in this perspective, no fault can be found with the approach of the Trial Court, as, if the Court has no jurisdiction, it cannot proceed to pass any ad-interim order or for that matter, to extend limited protection to the Plaintiff, so as to enable him to seek appropriate relief from the

proper forum. This position is well settled as back as in the case of **State of Orissa vs. Madan Gopal Rungta reported in AIR 1952 SC 12.**

5. To get over this position, learned Counsel for the Petitioners submits that in the present case, the Registrar had no jurisdiction to issue the Recovery Certificate and if it is so, it was open to the Petitioners to institute Suit instead of taking remedy to Revision, which is provided for under Section 154 of the Act. Reliance is placed on the decision of the Apex Court in **Dhulabhai etc. v. State of Madhya Pradesh & Anr. reported in AIR 1969 SC 78.** This submission clearly overlooks the observation made in the said decision that the jurisdiction of the Civil Court is not excluded in cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. That is not the grievance made in the present Suit.

6. Viewed in this perspective, no fault can be found with the conclusion reached by the Trial

Court in returning the Plaint in exercise of powers under Order VII Rule 10 of the Code of Civil Procedure. Hence, dismissed.

A.M.KHANWILKAR, J.